

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**THOMAS KELLEY,**

**Plaintiff,**

**CIVIL ACTION NO. 08-CV-10448-DT**

**vs.**

**DISTRICT JUDGE DENISE PAGE HOOD**

**STEVE MCLAIN,  
et al.,**

**Defendants.**

**MAGISTRATE JUDGE MONA K. MAJZOUB**

**OPINION AND ORDER DENYING PLAINTIFF’S MOTION TO AMEND COMPLAINT**

This matter comes before the Court on Plaintiff’s Motion to Amend Complaint filed on May 19, 2008. (Docket no. 17). Plaintiff wishes to add only a form of relief, injunctive relief, by this proposed amendment. (*Id.*). All pretrial matters have been referred to the undersigned for decision. (Docket no. 6). Plaintiff’s motion is ready for ruling.

Rule 15(a), Fed. R. Civ. P., provides that a party may amend its pleading once as a matter of course prior to service of a responsive pleading or within twenty days of serving its pleading if no responsive pleading is required. Otherwise “a party may amend its pleading only with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). In deciding whether to grant a motion for leave to amend, the trial court considers such factors as undue delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failures to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of the amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Hageman v. Signal L.P. Gas, Inc.*, 486 F.2d 479, 484 (6<sup>th</sup> Cir. 1973).

Leave of court is required before Plaintiff may now amend his Complaint. This Court has contemporaneously with this Order recommended that Defendants' Motion for Summary Judgment be granted and that this action be dismissed. Because Plaintiff has failed to show that Defendants violated his constitutional rights, any amendment to the form of relief requested is futile. Plaintiff's motion will therefore be denied.

**IT IS THEREFORE ORDERED** that Plaintiff's Motion to Amend Complaint (docket no. 17) is **DENIED**.

### **NOTICE TO THE PARTIES**

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: May 30, 2008

s/Mona K. Majzoub  
MONA K. MAJZOUB  
UNITED STATES MAGISTRATE JUDGE

### **PROOF OF SERVICE**

I hereby certify that a copy of this document was served upon Thomas Kelly and Counsel of Record on this date.

Dated: May 30, 2008

s/ Lisa C. Bartlett  
Courtroom Deputy  
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